

## Update: Traffic Benchbook— Revised Edition, Volume 2

### CHAPTER 2

#### Procedures in Drunk Driving and DWLS Cases

##### 2.6 Arraignment/Pretrial Procedures

###### E. Guilty and Nolo Contendere Pleas

###### 3. Collateral Attack of Guilty Plea to Prior Offense

Insert the following language at the end of Section 2.6(E)(3), after the first partial paragraph near the top of page 2-38:

The six-month time limit established in the amendments to MCR 6.610(E)(7) and MCR 7.103(B) for bringing motions to withdraw pleas in district court and for appealing denials of such motions may be applied retroactively. In *People v Clement*, \_\_\_ Mich App \_\_\_ (2002), the defendant was charged with OUIL/UBAL-3d. After being bound over on the charge, the defendant moved, on the basis of deprivation of counsel, to set aside a prior plea-based conviction for impaired driving entered in 1995. The district court granted that motion, and defendant thereafter brought a motion in circuit court to quash the OUIL/UBAL-3d charge. The circuit court denied the motion, finding that the district court's order setting aside the 1995 conviction was invalid since defendant waited too long after being sentenced to file his motion. On appeal, defendant argued that the six-month deadline for challenging guilty pleas in district court should not apply to his case because the amendments to MCR 6.610(E)(7)(a) and MCR 7.103(B)(6), which established the six-month time limit, did not take effect until September 1, 2000, approximately five years after the date of the prior conviction. The Court of Appeals affirmed the circuit court's denial of defendant's motion to quash, holding that defendant's collateral attack was time-barred under the rules. In so holding, the Court relied on the rules' staff comments, which unambiguously state that the six-month time limit for judgments

entered before the effective date of the amendment (September 1, 2000) is to commence on the amendment's effective date. The Court explained its rationale as follows:

“The amendments to MCR 6.610(E)(7)(a) and MCR 7.103(B)(6) make clear the Supreme Court's intention to foreclose unequivocally appeals of district court guilty pleas brought over six months after entry of the judgment. Moreover, the interplay of [*People v Ward*, 459 Mich 602 (1999)], MCR 6.610(E)(7)(a), and MCR 7.103(B)(6) convinces us that the staff comment[s] to the [foregoing court rules] are entirely correct: A defendant who pleaded guilty to an offense in district court before the effective date of the amendments had only six months from September 1, 2000, to challenge the plea. Any other interpretation would contravene the *Ward* Court's strong disavowal of delayed challenges to guilty pleas and the Court's corresponding intent to limit the time period for challenging a plea-based conviction. Defendant missed the six-month deadline in the instant case, and therefore the district court erroneously allowed defendant to withdraw his guilty plea in the 1995 case.” *Id.* at \_\_\_\_.

Apart from its reliance on the foregoing court rules, the Court of Appeals also rested its opinion on the explicit holding of *Ward, supra*, which foreclosed collateral attacks on prior convictions when made on the basis of subsequent sentencing considerations:

“The instant case presents analogous facts to those at issue in *Ward*. Indeed, defendant waited over five years to challenge his guilty plea, and he did so only after being charged with OUIL 3d. Therefore, a challenge by the prosecutor to the district court's order of dismissal in defendant's 1995 case would have been meritorious under *Ward*, even disregarding the amendments to [the foregoing court rules].” *Id.* at \_\_\_\_ n 2.

Finally, the Court rejected defendant's ex post facto argument, finding it so cursory that it did not even have to address it. However, the Court stated that, if it were to address the issue, it would find no constitutional violation since the court rule amendments were procedural and “did not criminalize a theretofore innocent act, did not aggravate a crime previously committed, did not provide greater punishment for a crime, and did not change the proof necessary for a conviction.” *Id.* at \_\_\_\_.